

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PHAN HUE,

Plaintiff,

v.

JAMES UPDIKE, JOSEPH  
MATALONI, et al.,

Defendants.

No. 1: CV-01-1064

(Judge Kane)

(Magistrate Judge Smyser)

14  
2/11/02  
FILED  
HARRISBURG

FEB 08 2002

MARY E. D'ANDREA, CLERK  
Per

DEPUTY CLERK

**CORRECTIONS DEFENDANTS' MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT**

Corrections Defendants, Joseph Mataloni, Edward O'Brien and Dale Hazlak hereby move this Court to dismiss the complaint for failure to state a claim upon which relief may be granted under Federal Rule of Civil Procedure (12)(b)(6), for failure to exhaust administrative remedies under 42 U.S.C. §1997e(a), and for such other grounds as set forth in the supporting brief.

**WHEREFORE**, Corrections Defendants respectfully request that the complaint be dismissed with prejudice.

Respectfully submitted,

*Marsha M. Davis*

By: Marsha M. Davis, Assistant Counsel  
Attorney I.D. No. 28018  
PA Department of Corrections  
Office of Chief Counsel  
55 Utley Drive  
Camp Hill, PA 17011  
(717) 731-0444

Dated: 2/8/02

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

PHAN HUE,

Plaintiff

: No. 1: CV-01-1064

v.

: (Judge Kane)

JAMES UPDIKE, JOSEPH  
MATALONI, et al.,

: (Magistrate Judge Smyser)

Defendants.

**CERTIFICATE OF SERVICE**

I hereby certify that I am this day depositing in the U.S. mail a true and correct copy of Corrections Defendants' Motion to Dismiss Plaintiff's Complaint in the above-referenced matter.

Service by first-class mail Addressed as follows:

Phan Hue DY-0557  
SCI-Retreat  
660 State Route 11  
Hunlock Creek, PA 18621



Cathleen E. Phillips  
Clerk Typist 2

PA Department of Corrections  
Office of Chief Counsel  
55 Utley Drive  
Camp Hill, PA 17011  
(717) 731-0444

Dated: February 8, 2002